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Counsel for Microsoft Corporation

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

In re:) Chapter 11
)
CIRCUIT CITY STORES, INC., et al.,) **Case No. 08-35653 (KRH)**
)
Debtors.) (Jointly administered)
)

**RESPONSE OF MICROSOFT CORPORATION TO
DEBTORS' FORTY-FIRST OMNIBUS OBJECTION TO CLAIMS
(DISALLOWANCE OF CERTAIN NO LIABILITY CLAIMS THAT WERE (I) PAID
PREPETITION OR (II) SATISFIED POSTPETITION)**

Microsoft Corporation (“Microsoft”), by and through its undersigned counsel, hereby files this response (“Response”) to the Debtors’ Forty-First Omnibus Objection to Claims (Disallowance of Certain No Liability Claims That Were (I) Paid Prepetition or (II) Satisfied Postpetition) (the “Objection”), and respectfully represents as follows:

1. Both pre- and post-petition, Microsoft supplied various products to the Debtor, including Xbox consoles and other goods, pursuant to a Direct Retailer Agreement. The goods were supplied pre-petition on a credit basis and post-petition on a cash-in-advance basis. Besides receiving cash payments for goods and services, Microsoft was to provide credit to the Debtor for agreed advertising programs featuring Microsoft products, price protection rebates when products held by the Debtor dropped in price, return credits or sell through credits and some miscellaneous other adjustment items. *See* Declaration of Marc Barreca in Support of Response of Microsoft

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Corporation to the Debtor's Forty-First Omnibus Objection to Claims (the "Barreca Decl."), ¶ 2.

2. Microsoft maintains the following filed claims (collectively, the "Claims") against the Debtor:

- a. Section 503(b)(9) claim in the amount of \$844,900.00, on file with the Debtor as Claim No. 965; and
- b. Prepetition claim (Microsoft Corporation) in the amount of \$8,153,021.35, on file with the Debtor as Claim No. 9007.

See id. ¶ 3, Ex. A. Microsoft also timely served a reclamation demand by letter, dated November 26, 2008. *Id.*

3. On February 25, 2009, Microsoft contacted the Debtor to propose netting all amounts owed between the parties, including the Claims. The Debtor and Microsoft exchanged communications regarding the Claims, but the Debtor has not formally responded to Microsoft's recoupment proposal. Microsoft sent a follow-up letter to the February 25, 2009 letter on September 25, 2009, but has received no response. *Id.* ¶ 4.

4. On September 15, 2009, the Debtor filed the Objection, objecting to *inter alia*, Claim No. 965, Microsoft's 503(b)(9) claim ("503(b)(9) Claim") in the amount of \$844,900.00, on the basis that the claim was paid prior to the Petition Date. *See* Dkt. # 4890 at p. 6 ("The basis for the disallowance of the claims listed on Exhibit C attached hereto is that all of the claims . . . were paid prior to the Petition Date.").

5. Based on the ambiguity and lack of detail supporting the Debtor's Objection, Microsoft cannot determine whether or not the Debtor's Objection is valid. The Debtor never paid Microsoft for the goods covered by Microsoft's 503(b)(9) Claim. Absent recoupment of postpetition credits owing by Microsoft to the Debtor against Microsoft's claim for goods supplied within the 20 days prior to bankruptcy, Microsoft has not been "paid" for goods received by the Debtor. To date,

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the Debtor has not provided Microsoft with its position regarding recoupment. Microsoft cannot substantively respond to the Debtor's Objection based merely on the vague assertion that Microsoft's claim was paid pre-petition. *Id.* ¶ 6.

WHEREFORE, Microsoft respectfully requests that the Court overrule the Debtor's objection as to Claim No. 965. Alternatively, Microsoft respectfully requests that the Court compel the Debtor to articulate a more specific objection to Microsoft's 503(b)(9) claim, including an articulation of the Debtor's position on recoupment of post-petition credits against Microsoft's pre-petition claim, such that Microsoft can substantively respond.

Respectfully submitted,

Dated: Washington DC
October 6, 2009

K&L GATES LLP

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Response of Microsoft Corporation to Debtors' Forty-First Omnibus Objection to Claims is to be served by electronic means through the Court's ECF/CM system this 6th day of October, 2009.

/s/ Eric Rusnak

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